



**Rule(s) Review Checklist Addendum**  
(This form must be filled out electronically.)

**This form is to be used only if the rule(s) was/were previously reviewed, and has/have not been amended/repealed subsequent to that review.**

All responses should be in **bold** format.

Document(s) Reviewed (include title): **WAC 458-20-155**  
**Information and computer services**

Date last reviewed: **September 1999**

Reviewer: **JoAnne Gordon**

Date current review completed: **November 5, 2002**

Briefly explain the subject matter of the document(s):

**WAC 458-20-155 explains the application of the business and occupation (B&O), retail sales, and use taxes as they apply to persons providing information or computer services, and persons who manufacture, develop, process, or sell information or computer programs.**

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

**1. Public requests for review:**

YES	NO	
	<b>X</b>	Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request?

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

**2. Related statutes, interpretive and/or policy statements, court decisions, BTA decisions, and WTDs:** (Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.)

YES	NO	
<b>X</b>		Are there any statutory changes subsequent to the previous review of this rule that should be incorporated?
	<b>X</b>	Are there any interpretive or policy statements not identified in the previous review of this rule that should be incorporated? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	<b>X</b>	Are there any interpretive or policy statements that should be repealed



		because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	<b>X</b>	Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) subsequent to the previous review of this rule that provide information that should be incorporated into this rule?
<b>X</b>		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) subsequent to the previous review of this rule that provide information that should be incorporated into the rule?
	<b>X</b>	Are there any changes to the recommendations in the previous review of this rule with respect to any of the types of documents noted above? (An Ancillary Document Review Supplement should be completed if any changes are recommended with respect to an interpretive or policy statement.)

If the answer is “yes” to any of the questions above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

**House Bill (HB) 1361 (Chapter 320, Laws of 2001) clarifies that charges for licensing canned software to end users are taxable as retail sales by excluding such charges from the definition of "royalties." RCW 82.04.2907**

**The following WTDs, published after the previous review of Rule 155, should be incorporated when the rule is amended:**

- **Det. No. 98-213, 19 WTD 777 (2000), and Det. No. 98-195, 18 WTD 342, determined that payments by an Original Equipment Manufacturer (OEM) for copying, distributing, marketing, and sublicensing are in the nature of a royalty. For periods before July 1, 1998, royalty income was subject to the service and other activities B&O tax. Effective July 1, 1998, and after, such income is subject to the royalties B&O tax.**
- **Det. No. 99-345, 19 WTD 618 (2000), determined that the co-location of computer equipment on the taxpayer's premises represented a license of use real estate rather than a rental of real estate.**

**3. Additional information:** Identify any additional issues (other than those noted above or in the previous review) that should be addressed or incorporated into the rule. Note here if you believe the rule can be rewritten and reorganized in a more clear and concise manner.

**4. Listing of documents reviewed:** The reviewer need identify only those documents that were not listed in the previous review of the rule(s). Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented:



## **RCW 82.04.2907 Tax on royalties from granting intangible rights**

Interpretive and/or policy statements (e.g., ETAs, PTAs, and IAGs):

Court Decisions:

Board of Tax Appeals Decisions (BTAs):

Appeals Division Decisions (WTDs):

- **Det. No. 98-213, 19 WTD 777 (2000)**, determined that payments made by Original Equipment Manufacturers (OEMs) and resellers for the right to reproduce and distribute copyrighted software programs are “in the nature of royalties.” For the period in question, income derived from the right to reproduce and distribute copyrighted software was subject to the service and other activities B&O tax. Effective July 1, 1998, such income is subject to the royalties B&O tax.
- **Det. No. 98-202, 19 WTD 771 (2000)**, determined that amount identified for telephone service was part of charge for having on-line access to a reservation system. Determination concluded that as part of the charge for the information or service, the charge was not subject to use tax or deferred sales tax.
- **Det. No. 99-345, 19 WTD 618 (2000)**, determined that the co-location of computer equipment on the taxpayer's premises represented a license of use real estate rather than a rental of real estate. Determination also concluded that a software maintenance contract was subject to deferred sales tax because the contract did not adequately segregate the warranty and maintenance activities.
- **Det. No. 98-049R, 19 WTD 316 (2000)**, concluded that with respect to canned software manufactured in this state and leased or licensed to persons outside the state, the gross proceeds derived from the lease or license fees represented the gross proceeds subject to the manufacturing B&O tax.
- **Det. No. 98-195, 18 WTD 342**, determined that payments by an OEM to the owner of copyrighted software is subject to service and other activities B&O tax. The right to copy, distribute, market, and sublicense use of the software to end-users represented a royalty. Effective July 1, 1998, such income is subject to the royalties B&O tax.

Attorney General Opinions (AGOs):

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):



## 5. Review Recommendation:

- ☒ **Amend**
- ☐ **Repeal/Cancel** (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.)
- ☐ **Leave as is** (Appropriate even if the recommendation is to incorporate the current information into another rule.)
- ☐ **Begin the rule-making process for possible revision.** (Applies only when the Department has received a petition to revise a rule.)

**Explanation of recommendation:** Provide a brief summary of your recommendation, whether the same as or different from the original review of the document(s). If this recommendation differs from that of the previous review, explain the basis for this difference.

If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, court decisions).

**For reasons identified in the previous review, Rule 155 should be revised. At such time as the rule is revised, it should also incorporate Washington Tax Decisions published after the previous review.**

**Rule 155 will likely be affected if provisions relating to the national Streamlined Sales Tax Project (SSTP) are enacted into law. Thus, while there is a need to amend Rule 173, this reviewer recommends waiting until the final results of the SSTP are known.**

## 6. Manager action: Date: \_\_\_\_\_

\_\_\_\_\_ Reviewed and accepted recommendation

Amendment priority:

- \_\_\_\_\_ 1  
\_\_\_\_\_ 2  
\_\_\_\_\_ 3  
\_\_\_\_\_ 4